

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the City of San Clemente for an order authorizing the construction of five, permanent one-track at-grade crossings and three permanent one-track grade separated crossings and improvement of three existing crossings for the San Clemente Pedestrian Trail, known as the San Clemente Beach Safety Enhancement Project located on the Southern California Regional Rail Authority Orange Subdivision between railroad mile post 204.0 and 206.0 in the City of San Clemente, County of Orange, California.

Application 03-10-052
(Filed October 27, 2003)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Summary

Pursuant to Rules 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure,¹ this ruling sets forth the schedule, assigns a principal hearing officer, and addresses the scope of the proceeding, following prehearing conferences (PHC) held on February 6 and March 30, 2004.

¹ Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

Background

This application was filed by the City of San Clemente (City) on October 27, 2003. The City proposes to construct the San Clemente Beach Safety Enhancement Project (Project), which consists of five new one-track public trail—rail at grade crossings and three new one-track public trail—rail grade separated crossings, as well as improvement of three existing crossings on the Southern California Regional Rail Authority Orange Subdivision between railroad milepost 204.0 and 206.0 in the City. Timely protests were filed by the Burlington Northern and Santa Fe Railway Company and Commission staff. The late-filed protest of the State of California, Department of Transportation (CalTrans) was allowed by a Ruling of the Administrative Law Judge (ALJ) dated January 21, 2004.

Course of the Proceeding

At the February 6 PHC, the City indicated that funding necessary for the Project would no longer be available if it were not committed by June 30, 2004. The City would need to have all regulatory approvals in hand some time prior to that date. The City expressed the opinion that it was unreasonable to believe that this proceeding could be concluded within that time if there were an evidentiary hearing on contested factual issues, and urged the parties to undertake immediate settlement discussions. The Assigned Commissioner and assigned ALJ set a second PHC for March 2, 2004, and agreed to defer issuing a scoping memo until initial settlement discussions had been concluded.

The Assigned Commissioner held an all-party meeting at the Commission's offices in Los Angeles on February 19, 2004. The parties also held a settlement meeting among themselves. On February 25, 2004, the City requested that an ALJ be provided as a mediator, through the ALJ Division's

mediation program. ALJ Peter Allen conducted mediation sessions with the parties in San Clemente on March 15 and in San Francisco on March 24, 2004. The second PHC was rescheduled to March 30, 2004.

At the March 30 PHC, the City stated that all parties except CalTrans had come to a settlement in principle of all issues in this proceeding. After the City reasserted (without opposition) its position that the June 30, 2004 date for the funding commitment was firm, the parties agreed on a schedule for the remainder of this proceeding. This schedule is intended to allow the Commission to consider the proposed settlement, with the benefit of comments and reply comments as well as comments on the draft decision, in time for the City to meet the June 30, 2004 deadline for funding commitment, if all relevant regulatory approvals are obtained.² The schedule assumes that no hearings on contested material factual issues will be required. See Rule 51.6. The parties agree that, if hearings are required, this schedule will not remain viable.

Schedule

At the March 30, 2004 PHC, the parties agreed on the following schedule for the balance of this proceeding:

April 6, 2004	Settling parties file and serve motion for approval of settlement (attaching settlement)
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² The City represents that the most important outstanding permit, other than this application, is from the California Coastal Commission. The Project is currently scheduled to be considered at the Coastal Commission's meeting of April 14, 2004. (See <http://www.coastal.ca.gov/mtgcurr.html>.)

Ongoing	Discovery directed to preparation of comments on proposed settlement
April 20, 2004	Comments due
April 26, 2004	Reply comments due
May 17, 2004	Draft decision mailed
May 27, 2004	Draft decision on Commission agenda

It is my goal to close this case within the 18-month period from the date of this scoping memo for resolution of ratesetting proceedings. The principal hearing officer may, for good cause shown, alter this schedule within the 18-month timeframe.

Category of Proceeding

This ruling confirms this proceeding as ratesetting, as preliminarily determined by the Commission.

Assignment of Presiding Officer

ALJ Anne Simon will be the principal hearing officer.

Ex Parte Rules

Ex parte communications are restricted as set forth in Rule 7.

IT IS RULED that:

1. The scope of this proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The principal hearing officer will be Administrative Law Judge Anne Simon.
4. This ruling confirms that this proceeding is a ratesetting matter.

5. Ex parte communications are restricted as set forth in Rule 7 of the Commission's Rules of Practice and Procedure.

Dated April 8, 2004, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated April 8, 2004, at San Francisco, California.

/s/ KE HUANG for
ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.